IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5462 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI BAHADURBHAI KHACHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5462 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Rajkot City dated 10.4.2002 in exercise of powers vested in him by

Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as bootlegger and the detaining authority while recording the subjective satisfaction has considered the registrationof three different criminal cases punishable under the Bombay Prohibition Act and also the statements of two unnamed witnesses and has inferred that the activities of the petitioner is dangerous and his bootlegging would affect the public safety and health and in that way it is likely to disturb the public order.

From the bunch of the papers supplied to the detenu, it is clear that the offence mentioned in the table has been registered on 31.12.2000 where 23 bottles of prohibitory liquor were seized. The second offence was registered on 28.8.2001 i.e. after lapse of around 8 to 9 months where 71 bottles of such liquor were seized. The last offence registered was registered with Prohibition Police Station, Rajkot City on 29.3.2002 where 48 bottles were siezed from the tractor trolly. The statements of two unnamed witnesses are recorded on 8.4.2002 and were verified by the detaining authority on 9.4.2002. So, the proximate cause for drawing the inference or recording of the subjective satisfaction can be said to be the offence registered on 29.3.2002. The first witness has narrated the incident allegedly occurred on 8.12.2001 and the second witness has disclosed the stroy of the incident occurred on 23.2.2002. Ld. counsel for the petitioner has argued that the order under challenge is not sustainable on number of grounds, however, she has concentrated her arguments mainly on one ground that the order of detention has been passed mechanically. Because of the registration of the last offence on 29.3.2002, the Sponsoring Authority got the statement recorded on 8.4.2002 and the bunch of papers were submitted to the detaining authority. Plain reading of the statements clearly gives an impression that some formal verification was made by the detaining authority and on 10.4.2002 i.e. on the next day.

It is rightly argued by the ld.counsel for the petitioner that the ratio of the decision in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) vs. State of Gujarat & Ors., reported in 2000(3) GLR p. 2696 would squarely applies to the facts of the present case. In this judgment, this Court has referred the decision in the case of Kalidas C Kahar vs. State of Gujarat,

reported in 1993(2) GLR P. 1659. The facts of the present case clearly indicates that the order of detention has been passed mechanically. The detaining authority has not even cared to consider the time gap between all these three offences. In reference to that particular facts,there was no scope for him to record the subjective satisfaction under sec. 9(2) of the PASA Act and to exercise the privilege under this very section.

So, without dealing with the other grounds of challenge mentioned in the petition and argued, this petition is required to be allowed on this sole ground.

In the result, this petition is allowed. The impugned order of detention dated 10.4.2002 passed by Police Commissioner, Rajkot City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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